CHAN SOON LEE

v.

YB MENTERI SUMBER MANUSIA MALAYSIA & ANOR

HIGH COURT MALAYA, KUALA LUMPUR
ABDUL KADIR SULAIMAN J
[ORIGINATING MOTION NO: R1-25-28-97]
10 SEPTEMBER 1997

LABOUR LAW: *Industrial Court - Reference to Industrial Court - Discretion of Minister - Refusal to refer representation to Industrial Court - Whether Minister had acted in bad faith - Industrial Relations Act 1967, s. 20*

The applicant filed an originating motion seeking leave of this court to apply for *certiorari* and *mandamus* pertaining to the decision of the first respondent in refusing to refer the representation of the applicant made under s. 20(1) of the Industrial Relations Act 1967 ('the IRA') to the Industrial Court.

The applicant was promoted by her employer to the position of IT manager but believed that she remained head of the Management Information Systems ('MIS') Department. However upon discovering that the second respondent had advertised the vacancy of the position of the head, MIS Department, the applicant wrote to the former, expressing her concern and asking for an explanation, for otherwise she would consider herself dismissed.

The second respondent wrote a letter explaining the situation to the applicant and advised her to report to work but she refused and proceeded to make the representation under s. 20(1) of the IRA. The first respondent refused to refer her report to the Industrial Court and thus this application.

The issue for consideration was whether the first respondent (the minister) in the exercise of this power under s. 20(3) of the IRA in not referring the representation of the workman to the Industrial Court had acted in bad faith or was biased against the workman.

Held:

[1] All that was necessary at this stage was to see whether the applicant had satisfied the court that on the facts and matters placed before the first respondent, the representation of the applicant raised serious questions of fact or of law calling for adjudication.

[2a] The Minister was not required to give reasons in the exercise of his discretion. Therefore the absence of any reasons for his decision cannot be a ground for impeaching such decision. In this case however, the Minister had in fact provided reasons for so exercising his discretion.

[2b] By informing the applicant that her representation was not fit for reference to the Industrial Court, and having done so without bad faith or biasness on his part against the applicant, no *prima facie* case was shown by the applicant for leave to be granted to apply for the order sought.

[3] The applicant had acted prematurely in considering herself to have been dismissed without just cause or excuse by the second respondent merely upon the advertisement being put in the newspapers. What the applicant ought to do was to keep watch over the subsequent developments in the second respondent company to see whether by the conduct of the second respondent, she had in fact been dismissed from her employment. Only then would there have been justification for her to have considered herself to have been dismissed without just cause or excuse and consequently to make her representation.

[Application dismissed.]

Case(s) referred to:
Hodge v. Ultra Electric Ltd [1943] 1 KB 426 ***(refd)***
Hong Leong Equipment Sdn Bhd v. Liew Fook Chuan & Other Appeals [1996] 1 CLJ 665 ***(foll)***
Minister of Labour, Malaysia v. Lie Seng Fatt [1990] 1 CLJ 1103 ***(refd)***
Minister of Labour, Malaysia v. Sanjiv Oberoi & Anor [1990] 1 CLJ 44 ***(refd)***
Tay Bok Choon v. Tahansan Sdn Bhd [1987] 1 CLJ 441 ***(refd)***

Legislation referred to:
Industrial Relations Act 1967, s. 20(1), (2), (3)
Rules of the High Court 1980, O. 53 r. 1(1), (2)

For the applicant - Genii Seah Loo Gen; M/s Lobo & Assocs

Reported by Mariette Peters-Goh

JUDGMENT

Abdul Kadir Sulaiman J:

On 15 February 1997 the applicant filed an *ex parte* originating motion pursuant to O. 53 r. 1(2) of the Rules of the High Court 1980 (hereinafter referred to as 'the RHC') seeking the leave of this court to apply for orders of *certiorari* and *mandamus* pertaining to the decision of the 1st respondent

of 8 January 1997 made under s. 20(3) of the Industrial Relations Act 1967 (hereinafter referred to as 'the Act') refusing to refer the representation of the applicant made under s. 20(1) of the Act to the Industrial Court (hereinafter referred to as 'the IC'). The motion is supported by an affidavit of the applicant affirmed on 14 February 1997 and also accompanying the motion is the statement required under the said O. 53 r. 1(2) of the RHC. This *ex parte* application came before me on 29 July 1997 for disposal and at the end of the hearing I dismissed it and did not grant the leave sought for the following reasons.

The ground on which the relief is sought as disclosed in the aforesaid statement are that:

(a) the 1st respondent wrongly acted on an incorrect basis of fact;

(b) the 1st respondent wrongly treated the applicant's representation as frivolous and vexatious;

(c) the 1st respondent decided on questions of law and fact which is not authorised by the Act to decide;

(d) the 1st respondent acted in breach of procedural fairness when he gave no reasons for the said statutory decision;

(e) in making the said statutory decision the 1st respondent did not take into account the legal meaning of "reinstatement"; and

(f) the 1st respondent did not take into account that in making the said statutory decision the applicant's representation remain unsettled contrary to the objective and policy of the Act and the applicant's legitimate expectation.

These grounds are commonly cited nowadays in matters of this nature coming before this court especially after the decision made by the Court of Appeal in *Hong Leong Equipment Sdn. Bhd. v. Liew Fook Chuan & Other Appeals* [1996] 1 CLJ 665. While the decision has propounded the correct proposition of law in regard to the position of a workman in relation to his rights to livelihood guaranteed under the Federal Constitution and as to the position of the decision-maker in facing the challenge over his decision by an applicant, some practitioners have misconstrued the decision, making the workman in the industry as being untouchable in the sense that no employer for any just cause and excuse can ever dismiss his workman, and any slightest act on the part of the employer would be construed as a constructive dismissal of his workman without just cause or excuse. The position of the minister notwithstanding the discretion given to him under s. 20(3) of the Act has been relegated to the position of nothing but an intermediary having to transmit

every representation of a workman, received from the director-general of the Industrial Relations when reconciliation proceedings had failed to reach a settlement, to the Industrial Court for adjudication simply because of the guaranteed right to livelihood given to a workman. The said decision of the Court of Appeal has indeed laid down the guideline as to the function of the minister in the exercise of his discretion under s. 20(3) of the Act in respect to representation received from a workman and the function of the High Court in judicial review relating to the matter. Just as a workman is entitled to the said protection, similarly the law recognises the right of an employer to dismiss his workman with just cause or excuse. The minister when acting under s. 20(3) of the Act has to see that these two distinct rights are safeguarded based on the facts and material placed before him in the notification made to him by the director-general under s. 20(2) of the Act. When a dispute arises between an employer and his workman over employment or non-employment, and the matter is referred to him under s. 20(3) of the Act, the role of the minister is to ascertain whether on the facts and material placed before him, the representation raises serious questions of fact or of law calling for adjudication by the Industrial Court. If it is so, then it is his duty to have the representation of the workman referred. On the other hand, if on the facts and material before him, the representation is frivolous or vexatious, it is his duty to keep it away from being so referred.

Reverting to this matter in the application by the applicant, the background facts leading to the dispute as disclosed in her affidavit in support are that, in or about October 1991 she was promoted to the post of Management Information System (MIS) manager with the 2nd respondent company and her post was subsequently renamed as information technology manager. Despite the change in the job title, the applicant believes that she remains the head of the Management Information System (MIS) Department. However, later she came to know that on or about the middle of March 1996 the 2nd respondent advertised for vacant post of head, MIS Department. So, on 25 April 1996 she wrote to the 2nd respondent expressing her concern over the matter calling for a reply by 30 April 1996, failing which she would assume that the information concerning the filling of the post of head, MIS Department is true and she would act accordingly. Since by the given date no reply came from the 2nd respondent, on 2 May 1966 she wrote to the 2nd respondent informing that she had no alternative but to consider herself dismissed with effect from 2 May 1996. On the same day, the 2nd respondent gave her a reply as follows as evidenced by exh. SL10:

Our Ref: Pers/ra/96/0030
2 May 1996

Ms. Chan Soon Lee
7 Jalan USJ 2/2E
Subang Jaya
47600 PETALING JAYA

Dear Soon Lee,

ADVERTISEMENT FOR HEAD, MIS DEPARTMENT

We refer to your letter dated 25 April 1996 pertaining to our advertisement for the position of Head, MIS Department.

It is regrettable that before we could respond to your letter of 25 April 1996, as the undersigned was away, you have chosen to submit your letter of 2 May 1996 to consider yourself dismissed with effect from today, 2 May 1996.

While it is correct that the company is sourcing for a Head of MIS Department, it is not to replace you as IT Manager. It is the intention of the Company in the light of business exigency, both locally, regionally and internationally, to expand and upgrade progressively our management information system. Further, the Company needs to move aggressively on office automation and computerisation. Hence, our consideration to recruit a Head of MIS Department. Therefore, we must reiterate that the post advertised is not your position. We must categorically state that you have misconstrued our advertisement and therefore your interpretation is incorrect.

Please be assured that your position as IT Manager is not redundant or to be replaced. As you may have misunderstood the Company's structure and organisation, you are hereby advised to report to work by Monday 6th May 1996. In the light of the above, we are prepared to consider your letter of 2 May 1996 as null and void.

Yours faithfully,

ZAINAL ABIDIN MAJID
MANAGING DIRECTOR

Upon receipt of the above letter on 6 May 1996, the applicant instead of reporting back to work, wrote a reply refusing to accept the explanation given in the letter but accusing the 2nd respondent of "secretly advertised for the post of head, MIS department, without even the courtesy of informing" her. By a letter dated 9 May 1996, the applicant was given by the 2nd respondent another opportunity to report back to work by 13 May 1996. If she fails to do so, then the 2nd respondent would deem that she had abandoned her employment with the company. She did not go back to work but proceeded to make representation under s. 20(1) of the Act.

The applicant's affidavit goes on to state that two meetings arranged by the director-general of the Industrial Relations Department did not result in a settlement of the dispute with the 2nd respondent. On 13 January 1997 she received exh. SL13 which is the impugned decision, from the 1st respondent to the effect that her representation is not fit for reference to the Industrial Court. So, based on the facts, she was advised that the 1st respondent in making the said decision has acted in excess of or without jurisdiction on the grounds as earlier stated.

The learned counsel for the applicant, Cik L.G. Seah, in her submissions was correct in saying that at this stage of the proceedings for leave to apply for the orders sought, all she needs to satisfy the court is that whether on the evidence before it at this stage, a *prima facie* case is shown that leave should be granted. In other words, the material and the facts as laid out before the 1st respondent should disclose some triable issues which necessitate the referring of the applicant's representation by the 1st respondent to the Industrial Court or that the representation is not one which is frivolous or vexatious. In the present case, she says, as the evidence tendered by the applicant has not yet been rebutted by both the respondents, a *prima facie* case has been made out which left this court with no alternative but to grant leave for the applicant to apply for the orders. She then cited *Hong Leong Equipment*, *supra*, as an authority because in this case, she says, it affected the livelihood of the applicant as so guaranteed by the Federal Constitution. I do not think I can agree on that line of submissions because to support her contention simply on the ground of non-rebuttal of the evidence at the leave stage creates a *prima facie* case, would make the provisions in O. 53 r. 1(1) of the RHC redundant because every hearing of an *ex parte* application made under the rule must necessarily be without the rebuttal evidence of the respondent. Next, the learned counsel contends that as the 1st respondent by his decision in exh. SL13 did not give his reason for the decision, this court ought to grant leave, again quoting the *dicta* in *Hong Leong Equipment*, *supra.* At pp. 734-735, Gopal Sri Ram JCA said:

> To reiterate, the Minister, when refusing to refer representation in the exercise of his discretion under s. 20(3) of the Act, is reasonably expected to give reasons for his decision. This is because the decision he makes has an impact upon a fundamental right conferred by the Federal Constitution. Considerations of feasibility, public interest or national security do not apply here.
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> Of course, he may not be procedurally compelled to furnish them; See *Sanjiv Oberoi*. But if he gives no reasons or inadequate reasons, then, it is open for a court to conclude that he has no good reason for making the decision he did. The reasons he gives are, of course, subject to curial scrutiny for the purpose of determining whether he had exercised his discretion in accordance with law.

Thus, the issue here is whether the 1st respondent by his decision as contained in exh. SL13 has provided any reason for not referring the applicant's representation to the Industrial Court? In the case mentioned by his Lordship, ie, *Minister of Labour, Malaysia v. Sanjiv Oberoi & Anor* [1990] 1 MLJ 113 SC, the representation of the workman was referred to the minister by the director-general under s. 20(2) of the Act. The minister considered the report of the director-general and in the exercise of his discretion under s. 20(3) of the Act he did not deem it fit to refer the representation to the Industrial Court, as happened in the present case. The workman was informed accordingly of the decision. The workman challenged the said decision on the ground of excess or without jurisdiction or abuse of the minister's discretion in that he made the said decision without any lawful, valid or reasonable grounds. In the High Court, the learned judge held that the minister in exercising his discretion must state his reasons and accordingly directed the minister to file a further affidavit by stating his reasons why the matter was not referred to the Industrial Court. The minister appealed to the Supreme Court against this ruling of the learned judge. As for the learned judge's order requiring the minister to file further affidavit the Supreme Court held that the court cannot give direction about evidence unless all the litigants desire such direction to be made citing the authority from *Tay Bok Choon v. Tahansan Sdn. Bhd.* [1987] 1 MLJ 433. At p. 113, Abdul Hamid LP delivering the judgment of the court, however, said this:

> As for this appeal, we are of the view that on the evidence in this case the Minister of Labour had not acted unreasonably. There is no evidence that the Minister had acted in bad faith or that he was biased against Sanjiv Oberoi. The Minister of Labour is not required to give any reasons when he exercises his discretion under s. 20(3) of the Industrial Relations Act 1967. We hold therefore that the learned judge's direction that the appellant give reasons for not referring Sanjiv Oberoi's representation to the Industrial Court was not justified and we accordingly allow the appeal with costs.

Therefore, what to look for in such a case as this is whether the minister in the exercise of his power under s. 20(3) in not referring the representation of a workman to the IC is whether from the evidence he has acted in bad faith or that he was biased against the workman. There is no such evidence to be gathered from the content of the affidavit in support of this application. Hence, there is no *prima facie* evidence that the minister has acted in excess or without jurisdiction when he refused to refer the representation to the Industrial Court. As for the reasons for his decision, the minister is not required to give any reasons when he exercises such a discretion. Therefore, if by his decision, he did not provide any reason, that cannot be a ground for impeaching his said decision. Thus, the contention that the 1st respondent in making the said decision in exh. "SL13" acted in excess of or without jurisdiction having acted

in breach of procedural fairness when he gave no reasons for the said decision, lacks any merit. Even though the decision of the Supreme Court in *Sanjiv Oberoi, supra,* is clear in that the minister when exercising his discretion under s. 20(3) of the Act is not required to give any reasons, the decision of another panel of the Supreme Court in *Minister of Labour, Malaysia v. Lie Seng Fatt* [1990] 2 MLJ 9 on the question of the reasons for the decision, Hashim Yeop A Sani CJ (Malaya), delivering the judgment of the court said at p. 11:

> The Minister in his letter in fact gave the reason why he did not refer the matter to the Industrial Court. It would seem clear that the reason was that he considered the matter not a fit case and proper one to be referred. When arriving at this decision, he must have considered the facts surrounding the circumstances leading to the complaint the appellant made to the Director General.

Thus, the position is clear that even though the minister in the exercise of his discretion under s. 20(3) of the Act is not required to provide any reasons for such exercise of the power but by informing the workman that his representation is not a fit and proper one to be referred to the Industrial Court, as contained in exh. "SL13" in this application of the applicant, he has in fact provided reason for so exercising his discretion, having considered the facts surrounding the circumstances leading to the representation made to the director-general under s. 20(1) by the applicant. At p. 12 of the judgment in *Lie Seng Fatt, supra,* his Lordship continued:

> The minister's discretion under s. 20(3) is wide but not unlimited. As stated earlier, so long as he exercises the discretion without improper motive, the exercise of discretion must not be interfered with by the court unless he had misdirected himself in law or had taken into account irrelevant matters or had not taken into consideration relevant matters or that his decision militates against the object of the statute. Otherwise he had a complete discretion to refuse to refer a complaint which is clearly frivolous or vexatious which in our view this is one.

So, either way, by informing the applicant that her representation is not one fit for reference to the Industrial Court, and having done so without any improper motive or without any bad faith or biased on his part against the applicant, no *prima facie* case is shown by the applicant for leave to be granted to apply for the orders sought. The applicant has failed to satisfy this court that a triable issue of facts or law has been shown by this application for such leave to be granted.

In further urging the court to grant the leave sought, the learned counsel contends that there is a point of law which necessitates the representation of the applicant to be referred to the Industrial Court. It is on the issue of the surrounding facts which led the applicant to consider that she had been

dismissed by the 2nd respondent without just cause or excuse by the 2nd respondent intending to fill a vacant post of head, MIS department when the applicant was still the holder of that post. In support, she cited the case of *Yeoh Yong Woi v. The Minister of Labour, Malaysia and Teo Chiang Kok* [1995] 2 BLJ 166. The learned counsel says that this piece of evidence that the applicant considers herself to have been dismissed without just cause or excuse, has not been challenged as yet by the 2nd respondent. That being the case, a *prima facie* evidence has been made out to this court for the grant of the leave sought to enable the applicant to file an application for the orders of *certiorari* and *mandamus* against the decision of the 1st respondent. I find this line of argument is a little bit confusing. At this stage, it is the 1st respondent who is on trial and not the 2nd respondent. The trial of the 2nd respondent, if I may call it a trial, will only commence before the Industrial Court if the applicant succeeds in its attempt to get the leave of this court to make an application against the 1st respondent for *certiorari* to quash the decision he made and to order him to refer the applicant's representation to the Industrial Court for adjudication. If the applicant succeeds in overcoming this first hurdle only then will there be a substantive motion against the 1st respondent, and then if she further succeeds in the substantive motion will there be an issue against the 2nd respondent before the Industrial Court wherein the 2nd respondent will carry the burden of establishing, if there was a dismissal, that the dismissal was with just cause or excuse. Until such time the Industrial Court has no jurisdiction to adjudicate in respect of the dispute the applicant has with the 2nd respondent. Hence, the issue of the 2nd respondent having to rebut the allegation of the applicant does not arise at this stage. All that is necessary at this stage is to see whether the applicant has satisfied this court that on the facts and materials placed before the 1st respondent, the representation of the applicant raises serious questions of fact or of law calling for adjudication, for that is the role to be played by the 1st respondent when exercising his discretion under s. 20(3) of the Act. If the representation failed to achieve that level of proof, that is the end of the matter relating to the dispute between the applicant and the 2nd respondent. The 2nd respondent is not to be heard in his defence. This is so because the jurisdiction of the Industrial Court to adjudicate upon the dispute is dependent upon the reference of the representation to it by the minister. In *Yeoh Yong Woi*, *supra*, Dato' Hj. Mohd. Eusoff bin Chin J (as he then was) said at p. 170 of the judgment:

> Whether the applicant was justified in considering himself having been dismissed without just cause or excuse because of what he felt was the unwarranted action of his employer, is a question of law which ought to be properly investigated and determined by the Industrial Court.

Having considered the said judgment of his Lordship, I am of the view that his Lordship there was not laying down the principle of law that in every case where a workman asserts in his representation that he considers himself to have been dismissed without just cause or excuse, a question of law arises which ought to be investigated and determined by the Industrial Court. If that be so, there would not be a necessity for the minister to be troubled with having to make a decision under s. 20(3) of the Act whether or not to refer a representation to the Industrial Court. All that need to be done by the minister upon such an averment being found in a representation is to automatically refer such representation to the Industrial Court for an award. But that is not the intention of the legislature when it enacted the said s. 20(3) of the Act. It instead imposes upon the minister a duty to exercise his discretion as to whether or not to refer such a representation to the Industrial Court for an award. The minister is only to refer such representation as he thinks fit to be so referred. If in the exercise of his proper discretion in dealing with a representation, he finds on the facts and material placed before him that the representation is one which is frivolous or vexatious, he is duty bound not to refer such a representation to the Industrial Court. In citing the above *dicta* by his Lordship, the learned counsel has either intentionally or inadvertently misunderstood the reasoning behind his Lordship having said so in the case. In that case, the appellant, the executive manager/chief executive of the 2nd respondent was paid a salary of RM3,000 plus entertainment and travelling allowance of RM1,250 making a total of RM4,250 per month. Subsequently, a senior manager was appointed and by that appointment the applicant's title still remained but he was made subordinate to the new appointee and his monthly remuneration was reduced from RM4,500 to RM3,000. The applicant protested on the reduction in position and that of his remuneration. The employer did not entertain his protest. Since he was not restored his full remuneration, he considered himself having been dismissed by the 2nd respondent and stopped work. It was upon those facts that his Lordship came up with the *dicta*. Unfortunately the learned counsel did not reveal to this court what his Lordship said earlier on in the same paragraph of the judgment which I now reproduce:

> In this case the applicant was the Chief Executive of the Respondent but considered himself having been demoted by the appointment by the 2nd respondent of a Senior Executive above him, but when the 2nd respondent unilaterally reduced the applicant's monthly remuneration from $4,250.00 to $3,000.00, the applicant was of the view that the 2nd respondent had breached his contract of service, and consequently considered himself having been dismissed without just cause or excuse.

Indeed, in that case, a triable issue had been made out on the averment of the applicant because of the reduction in his salary consequent upon the appointment of a new appointee. The issue is whether by the reduction in the salary the workman there had been demoted which would amount to his dismissal. But the same position does not happen in our present case before the 1st respondent. The letter of the 2nd respondent to the applicant of 2nd May 1996 explains it all. The applicant was twice asked by the 2nd respondent to go back to work and was prepared to regard that letter of the applicant deeming herself to have been dismissed on account of the advertisement for head, MIS department in the press as null and void. With all that assurance given she chose to maintain her stand and wants this court to grant her leave to apply for the orders sought to compel the 1st respondent to refer her representation to the Industrial Court for an award.

Lastly, the learned counsel also submits that unless leave is granted to enable the applicant to file a substantive motion for the orders, "Hashim Yeop's test" as mentioned in *Hong Leong Equipment*, *supra*, cannot be applied. However, if leave is granted, when served with the substantive motion, the 1st respondent may reconsider his earlier decision not to refer the representation of the applicant to the Industrial Court. All I can imagine at the moment by this line of submission is that what the applicant wants is the opportunity to serve the motion on the 1st respondent with a fervent hope that when so served with the process, the 1st respondent will be frightened or will find a way out of having to face the challenge by changing his mind and have the representation of the applicant referred immediately to the Industrial Court for an award. This is uncalled for. In this sort of matter both the court and the 1st respondent have been entrusted by the legislature with a duty to act in accordance with law having regards to the constitutional guarantee given to the applicant of his right to livelihood and the guarantee given to the 2nd respondent that it could dismiss its workmen with just cause or excuse. The duty of the 1st respondent is to see that no frivolous or vexatious representation be referred to the Industrial Court for an award. The duty of the court at this stage is also to see that the applicant's representation in not frivolous or vexatious but raises serious questions of fact or of law calling for adjudication by the Industrial Court. If the evidence falls short then the applicant cannot make use of the machinery of court to satisfy her desire.

In her affidavit, the applicant deposed that at the first meeting with the director-general of the Industrial Relations Department on 15 June 1996, she brought the facts and the documents as mentioned in her affidavit in support to the attention of the director-general. Therefore, whatever evidence there was, they were all placed before the 1st respondent when he was so notified by the director-general under s. 20(2) of the Act that there was no likelihood of the representation being settled by way of conciliation. In *Hong Leong Equipment*, *supra*, Gopal Sri Ram JCA at p. 714 said:

> To summarise, when a question arises as to whether the Minister has correctly exercised his discretion under s. 20(3) of the Act, it is the solemn duty of a court to undertake a meticulous examination of the facts that were made available to the Minister. If the examination reveals that the representation made under s. 20(1) are neither perverse, frivolous nor vexatious, a decision not to refer is liable to be quashed by an order of *certiorari*.

Now, having taken a meticulous examination of the facts that were made available to the 1st respondent, I find from the evidence that the applicant has not been able to raise any serious question that the 1st respondent, in making the decision, was acting on an incorrect basis of fact. The applicant had, in fact, acted prematurely in considering herself to have been dismissed without just cause or excuse by the 2nd respondent merely upon the advertisement being put in the newspapers calling for a candidate having regard to the explanation given by the 2nd respondent in its letter of 2 May 1996. What the applicant ought to have done was to accept the "invitation" by the 2nd respondent to resume work and to keep watch over the subsequent development in the 2nd respondent's company to see whether by the conduct of the 2nd respondent she had in fact been dismissed from her employment when the new appointee was taken in as head, MIS department. Only then will there be justification for her to have considered herself to have been dismissed without just cause or excuse and consequently to make her representation.

On the ground that the 1st respondent in making the said decision had not taken into account the legal meaning of "reinstatement" and thereby had committed an error of law, there is no specific submissions on this question of law made by the learned counsel. However, in my view, the issue of reinstatement does not at all arise in this case. The 2nd respondent by its letter of 2 May 1996 to the applicant specifically denies that by the advertisement it amounted to the dismissal of the applicant and thereby "invited" the applicant to report back to her position as IT manager by 6 May 1996. But she did not. Failing to see her back at work on the date given, the 2nd respondent gave her a further opportunity to report back to work by 13 May 1996 as seen from its letter of 9 May 1996. She again did not respond. In *Hodge v. Ultra Electric Ltd* [1943] 1 KB 426, Parker J said at p. 466:

> It appears to me that reinstatement involves putting the specific person back, in law and in fact, in the same position as he occupied in the undertaking **before the employer terminated his employment**. (emphasis added).

But in the applicant's case, her employment was never terminated by the 2nd respondent. It was she who considered herself to have been dismissed on being aware of the fact of the advertisement for the post of head, MIS department when she was then holding the post of the Information Technology Manager.

It is also provided in the ground for challenging the decision of the 1st respondent that he did not take into account that in making the said decision not to refer her representation to the Industrial Court, the said representation remain unsettled contrary to the objective and policy of the Act and her legitimate expectation. No submissions were made as to how the representation remained unsettled contrary to the objective and policy of the Act and her legitimate expectation. So, what really is the objective and policy of the Act? In *Hong Leong Equipment*, *supra*, Gopal Sri Ram JCA said this at pp. 704-705:

> It cannot be gainsaid that Parliament intended to elevate the status of a workman as defined in the Act from the weak and subordinate position assigned to him by the common law to a much stronger position. The legislature has willed that the relationship of employer and workman as resting on a mere consensual basis that is capable of termination by the employer at will with a meagre consequence of paying the hapless workman a paltry sum as damages should be altered in favour of the workman. It has accordingly provided for security of tenure and equated the right to be engaged in gainful employment to a proprietary right which may not be forfeited save, and except, for just cause or excuse. Due recognition of this higher status must therefore be accorded by our courts if they are to act in obedience to the will of Parliament.

It is without doubt that the Act has changed the common law position in regard to the contractual relationship between an employee and his employer in allowing specific performance by way of reinstatement when the employer is found to have dismissed his employee without just cause or excuse. But once the employer is found to have so dismissed his employee with just cause or excuse *cadid questio*. The objective and policy of the Act is to strike a balance between the right of a workman to livelihood as against the right of the employer to dismiss his workman upon just cause or excuse. If from the evidence at this *ex parte* stage for leave, the applicant is not able to raise any serious issue for trial, the mere fact that her representation is not referred to the Industrial Court by the 1st respondent, it does not mean that the representation or the dispute remains unsettled. Not all representation made pursuant to s. 20(1) of the Act need to be adjudicated by the Industrial Court for an award. Only those not frivolous or vexatious would be so adjudicated. As for this representation of the applicant, I cannot find any defect in the 1st respondent not having referred it to the Industrial Court based on the facts and material placed before the 1st respondent.

For all those reasons, this application for leave to apply for orders of *certiorari* and *mandamus* was dismissed.